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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BRUCE EDWARD PARR AND GRACE M. PARR,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

In an action on promissory notes by the Small Business Administration, should the obligor who was induced to incur the indebtedness by the unauthorized, affirmative misrepresentations of agents of the Small Business Administration that payments on the notes would be deferred until he was able to make them, be entitled to obtain an offset based on principles of equitable estoppel.

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UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Bruce Edward Parr and Grace M. Parr petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinions of the court of appeals (App. A, *infra*, 1a-8a) and the district court (App. C, *infra*, 9a-10a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. B, *in-*

fra, 9a) was entered on June 24, 1986. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

United States Code, Title 15, Section 631(b)(1976).

United States Code, Title 15, Section 636(b)(1) and (2)(1976 and Supp. 1978).

See Appendix D, *infra*, p.____ a)

STATEMENT OF THE CASE

Bruce and Grace Parr, the Petitioners herein (hereinafter referred to as the "Parrs"), have been farmers in Parmer County, Texas, for over forty-four years. Without the benefit of sizeable inheritances, the Parrs' success in farming enabled them to build a farming operation with a net worth in 1978 represented to be in excess of $1.8 million. This long-term success was achieved in spite of having lost crops in almost one-quarter of their years in farming.

The Parrs had developed and come to rely on relationships with agricultural lenders which provided a stable source of credit over cycles of several years. On the strength of these credit arrangements, the Parrs could be assured of available capital and operating funds even in bad years. At the same time, the Parrs' lenders could look beyond the bad years toward repayment in good years, i.e., years of normal crops.

The Small Business Administration (hereinafter referred to as the "SBA") is authorized to make loans to small business concerns that suffer direct damage or a "substantial economic injury" as a result of a disaster or catastrophe. 15 U.S.C. Sec. 636(b)(1) and

(2) (1976 and Supp. 1978).[1] Payments of principal and interest on these loans may be deferred for up to five years. *Id.* The SBA implemented this authority in the form of a Disaster Loan Program. In 1976, Congress amended the Small Business Act of 1953 to extend its benefits to farmers and others "...engaged in the production of food and fiber..." 15 U.S.C. Sec. 631(b) (1976).

During 1978, the Parrs became aware of the SBA's Disaster Loan Program and began discussions with SBA personnel. In response to the Parrs' expressions of concern over the nature of the SBA's agricultural lending policies, the Parrs contended that the SBA assured them it could make disaster loans and could grant deferrals of payments of principal and interest where necessitated by disasters. Moreover, the Parrs testified that they advised the SBA of their need for stable lines of credit; specifically, that they would need a source of funds during bad times in order to survive until normal crops could be harvested and sold so that profits would be available to repay their loans. The SBA allegedly told the Parrs that the SBA would not call the loans during disaster years and would stand by them as a back-up to the Parrs' existing credit sources. That is to say, the SBA would provide financing for the Parrs even when their existing credit sources had left the market.

On December 15, 1978, the Parrs borrowed $189,000 and on May 17, 1979, borrowed an additional $195,000 from the SBA pursuant to the SBA's Disaster Loan Program. The initial installment payments of principal and interest on these loans were

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[1] References are to the statutes in effect on the dates at issue.

due April 1, 1980, and February 1, 1980, respectively. Because of continuing disaster conditions in their community, the Parrs asked for and were granted successive deferrals on their scheduled loan payments until July 1, 1981, and August 1, 1981, respectively.

On November 19, 1981, the SBA unexpectedly notified the Parrs that both debts were being accelerated. On April 1, 1982, the SBA demanded payment of all sums due under the above-described promissory notes. Except for the return by the Parrs of duplicate benefits in the amount of $13,809, no payments had been made on these debts because of the financial straits caused by successive disaster-caused crop failures.

As a result of the SBA denial of ongoing funding of their farm operations and the acceleration of the balances due to the SBA, the Parrs were unable to continue farming and were forced to lose their farm during a period of disaster. Further, the Parrs testified that they would have been able to repay the SBA loans if they had been able to keep their land and continue farming until after the disaster years had passed.

On March 7, 1983, Respondent brought suit against the Parrs seeking a money judgment. The SBA testimony established that the Parrs satisfied the statutory prerequisites for eligibility under the Disaster Loan Program. At all times in issue, assistance under the program could include both additional funding and deferrals of installment payments as they came due.

At the trial of the case, the Respondent established a *prima facie* case of its entitlement to payment on the debts. However, in a counterclaim, the Parrs re-

quested an offset and recoupment against the Respondent on the grounds that the Respondent should be bound by the statements of its agents and should not be allowed to breach or contradict to the Parrs' detriment the representations made to the Parrs and upon which the Parrs had relied.

At the close of the Parrs' case, the Respondent moved for a directed verdict on the grounds that it was immune from suit because of sovereign immunity. The alternate theory put forth by the Respondent was that the Parrs failed to raise a defense which was legally sufficient against the Respondent's *prima facie* case. The district court granted the Respondent's motion for directed verdict without explanation and entered judgment against the Parrs in the full amount asked for by the Respondent.

The United States Court of Appeals for the Fifth Circuit affirmed the district court on the grounds that the oral representations made by the SBA employees and supervisors could not become a part of the loan agreement between the Parrs and the SBA. The court stated, "Since no terms could have been added to the written promissory notes beyond those authorized by federal regulation, and since the SBA complied with its own regulations, any unauthorized or incorrect representation made to the Parrs did not become terms of the loan agreement." (App. A, *infra*, p. 8a).

REASONS FOR GRANTING THE WRIT

1. THIS CASE PRESENTS IMPORTANT QUESTIONS CONCERNING WHETHER AND IN WHAT CIRCUMSTANCES THE FEDERAL GOVERNMENT MAY BE EQUITABLY ESTOPPED BY THE AFFIRMATIVE MISCONDUCT OF ITS AGENTS.

At stake are the competing interests of the federal government and those who are affected by the exercise of power by that government. For its part, the government is seeking to protect the public fisc and preserve the orderly administration of its duties. Weighed against the interests of the government are the equally relevant interests of parties dealing with the government that they be treated justly and fairly.

2. ANALYSIS OF THE LAW OF ESTOPPEL OF THE FEDERAL GOVERNMENT SHOWS ITS DEVELOPMENT AWAY FROM THE SO-CALLED "TRADITIONAL VIEW" THAT THE GOVERNMENT MAY NOT BE ESTOPPED UNDER ANY CIRCUMSTANCES.

This Court has long ago recognized that "[A] government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there." *Cooke, et al. v. United States*, 91 U.S. 389, 398 (1875). In more recent times, this Court has rejected estoppel where the benefit sought from the government was beyond the scope of what the law allowed, *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947), and where, in the area of immigration, the acts of the government agents did not amount to "affirmative misconduct". *Immigration and Naturalization Service v. Miranda*, 459 U.S. 14

(1982); *Schweiker v. Hansen*, 450 U.S. 785 (1981); *United States Immigration and Naturalization Service v. Hibi*, 414 U.S. 5 (1973); *Montana v. Kennedy*, 366 U.S. 308 (1961). The Court has left the question open, however, where the acts of the government agent do amount to affirmative misconduct. *Miranda*, 459 U.S. at 17; *Montana*, 366 U.S. at 314-315; *Hibi*, 414 U.S. at 8-9.

Further, this Court has allowed what has generally been regarded as an estoppel where the petitioner's rights to citizenship were jeopardized by misrepresentations made by the government's agents. *Moser v. United States*, 341 U.S. 41 (1951); 4 K. Davis, *Administrative Law Treatise*, Sec. 20:4 (1983). In *Moser*, this Court provided Moser with relief not otherwise authorized by law based upon considerations of "justifiable reliance" on the wrong advice of the government "in a total setting which understandably lulled [Moser] into [a] misconception of the legal consequences of applying for exemption." *Moser*, 341 U.S. at 46. The Court focused on Moser's inability to "knowingly and intentionally waive his rights" and stated that "[N]othing less than an intelligent waiver is required by elementary fairness." *Moser*, 341 U.S. at 47. The Parrs contend the SBA's promises of continuing support and the Parrs' justifiable reliance on those promises present a set of facts warranting this Court's imposition of estoppel against the government.

Modern commentators have continued to criticize the traditional view and argue for allowing estoppel against the government where the elements of estoppel are shown to be present, where the unauthorized acts of the government's agents amounted to

"affirmative misconduct", and where permitting the estoppel would not unduly impair or infringe upon a substantial governmental interest. 4 K. Davis, *supra*; Sections 20:1-7 (1983); 70 Colum. L. Rev. 551 (1979).

The modern development of the law of estoppel against the federal government has taken place independently in each of the circuit courts of appeal with the result that the circuits are now split over what standards to apply in determining whether "affirmative misconduct" is present. Further, in those circuits that permit estoppel, there is confusion between the circuits as to the elements which must be present and the circumstances that warrant the permitting of an estoppel against the federal government. *See, e.g., Portmann v. United States*, 674 F.2d 1155 (7th Cir. 1982) (postmaster estopped by oral misrepresentation of employee); *Broad Avenue Laundry and Tailoring v. United States*, 681 F.2d 746 (Ct. Cl. 1982) (government estopped to deny contracting officer's authorized written modification of a contract); *Akbarin v. Immigration and Naturalization Service*, 669 F.2d 839 (1st Cir. 1982) (government estopped by alleged oral representation); *State of New Jersey v. Department of Health and Human Services*, 670 F.2d 1284 (3rd Cir. 1982) (recognizing modern trend away from traditional view, but concerned about departured in light of *Hansen*); *Hicks v. Harris*, 606 F.2d 65 (5th Cir. 1979) (court refused to estop government based upon traditional view, but questioned the current wisdom of the rule where justice not served); *United States v. Ruby Company*, 588 F.2d 697 (9th Cir. 1978) (estoppel of government allowable where affirmative misconduct shown—goverment's

decision not to order new survey was affirmative, but *not* misconduct).

3. THE COURT SHOULD ADOPT A RULE THAT PROTECTS THE CONSTITUTIONAL SEPARATION OF POWERS AND THAT DOES JUSTICE TO THOSE WHO DEAL WITH THE FEDERAL GOVERNMENT.

The traditional elements of estoppel are:

> 1. the party to be estopped must know the facts;
>
> 2. he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
>
> 3. the latter must be ignorant of the true facts; and
>
> 4. the latter must rely on the former's conduct to his injury.

As noted above, this Court has generally refused to estop the federal government for the nonfeasance of its agents, but has left open the question of whether estoppel shall apply where "affirmative misconduct" is present. *Montana*, 366 U.S. at 314-315. Lower courts have interpreted this as effectively adding a fifth element to the requirements for estoppel. *Ruby Company*, 588 F.2d at 703 (9th Cir. 1978).

The courts of appeal have been more willing to estop the federal government where a balancing of the equities in favor of the party harmed by government action would confer a benefit which was not far beyond that intended by Congress or which would not substantially impair public rights. *Emeco Industries,*

Inc. v. United States, 485 F.2d 652 (Ct. Cl. 1973); *Branch Banking & Trust Co., et al. v. United States*, 98 F.Supp. 757 (Ct. Cl. 1951); *Brandt v. Hickel*, 427 F.2d 53 (9th Cir. 1970); *United States v. Lazy FC Ranch*, 481 F.2d 985 (9th Cir. 1973). The Parrs suggest this factor as a sixth element to the requirements for estoppel of the federal government. As stated by Judge Wallace of the Ninth Circuit in a case involving title to public lands,

> It could be argued that there are some broad principles of equity which might assist the plight of the landowners in this case. But we have found no case which would allow the application of estoppel when there has been a failure of proof as to the required elements. *Indeed, the equitable discretion seems to cut only in the other direction. That is, the court can refuse to apply the doctrine when equity-policy considerations so demand, even though the technical elements may be present.* (Emphasis added.)

United States v. Ruby Company, 588 F.2d 697 (9th Cir. 1978), at 704. In footnote nine to that opinion, Judge Wallace goes on to say that "The government should be estopped *only* if policy and equity considerations so demand."

This case is one where adoption and application of such a rule by this Court would permit parties to receive justice when injured as a result of affirmative misconduct by agents of the federal government. The Parrs are clearly within the class of persons intended by Congress to receive the benefits of SBA farm disaster loans and deferrals. Further, SBA personnel represented to the Parrs that the government would

utilize the authorized programs to provide them with financial assistance and would stand by them during hard times. Agency discretion in withholding from the Parrs the benefits extended by Congress was demonstrated at trial to have been exercised in an arguably arbitrary and capricious manner.

When the balance is taken of the harm suffered by the Parrs in reliance upon representations made by government agents versus the harm caused the public treasury as a result of granting the estoppel, and the balance is viewed in the light of who caused the harm, equity and policy clearly favor the granting of review in this case and favorable application of the proposed rule. Adoption and application of this proposed rule to the facts of this case would also go far in providing the lower courts with standards upon which to reconcile their approach to this recurring problem. Guidance is needed both as to what constitutes "affirmative misconduct" and as to what this Court desires when such conduct is found.

The holdings of the district court and the Fifth Circuit Court of Appeals failed to consider the claim of estoppel raised by the Parrs against the federal government.[2] Equity and law require that this claim be given due consideration, assuming that the misrepresentations of the agents of the Small Business Administration were unauthorized. The facts of this case fall within the area left unanswered by this Court as to what may constitute "affirmative misconduct" of a government agent and, where such conduct is

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[2] Although the Parrs characterized their estoppel defense in the district court as a claim for breach of contract, the substance of that claim was estoppel.

found, what rule this Court wants as the law of the land. Due to the recurring and important nature of this question, this writ for certiorari should be granted.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

DATED: September 22, 1986.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 85-1424

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

BRUCE EDWARD PARR and
GRACE M. PARR,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Texas

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(June 24, 1986)

Before CLARK, Chief Judge, JOLLY and HILL, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

In 1978 and 1979, Bruce and Grace Parr (the Parrs) borrowed money from the United States through the Small Business Association (SBA) Disaster Loan Program. Although the SBA deferred repayment of these loans several times, the Parrs were unable to tender their required pay-

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

ments. In April 1982, the SBA accelerated the notes and in March 1983 brought this action against the Parrs to recover the amounts due. The Parrs, acknowledging their indebtedness, asserted three affirmative defenses. Prior to trial, the district court struck two of these defenses and allowed the case to proceed to trial before a jury on the remaining defense. At the close of all evidence, the district court granted the United States' motion for directed verdict and entered judgment for the United States.

On appeal, we are asked to determine whether the district court erred either by striking the two affirmative defenses or by granting the directed verdict for the United States. As we find no error, we affirm.

I

A.

The Parrs have been farmers in Frio County, Texas for over forty-four years. After suffering substantial financial losses, the Parrs, upon the recommendation of a local banker, investigated the possibility of obtaining loans from the SBA Disaster Loan Program. According to the Parrs, SBA officials advised them that the Disaster Loan Program was not a "one shot" situation, but rather that the SBA would continue to lend operating funds in the future. The Parrs also contend that the SBA officials represented that payments due during disaster years would be deferred or restructured and that repayment of the loan would be conditioned upon normal production.

Based on these representations[1] on December 15, 1978, the Parrs borrowed $189,000 at three percent interest from

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[1] The district court did not state any reason when granting the directed verdict. Thus, on appeal we review all the evidence in the "light and with all reasonable inferences most favorable to the Parrs". *Boeing Co.* v. *Shipman*, 411 2d 365, 374 (5th Cir. 1969) (enbanc).

the SBA. The loan was evidenced by a promissory note which stated that the first payment was due on April 1, 1980. The Parrs continued to suffer financial stress and thus on May 17, 1979, borrowed an additional $195,000 at three percent interest from the SBA. This debt, also evidenced by a promissory note, required the first payment to be tendered on February 1, 1980. On January 24, 1980, the SBA deferred payment on the loan until August 1, 1980.

Meanwhile, the April 1 repayment date on the first loan was quickly approaching and the Parrs were still in financial straits. Unable to make the loan payments from the proceeds of their farm production, the Parrs applied for yet another loan[2] and the SBA agreed to defer payment until October 1, 1980. Both the August 1, 1980 repayment date for the second loan and the October 1, 1980 repayment date for the first loan passed without payments by the Parrs. On October 21, 1980, the SBA notified the Parrs that they had been allowed duplicated benefits and demanded repayment of $13,809; the SBA also reminded the Parrs that payments on both loans were past due. On November 6, 1980, the Parrs repaid the $13,809, but did not tender any payments due on either loan.

On November 25 and December 5, the SBA wrote the Parrs that repayment on the first loan was again being deferred, this time to April 1, 1981. The SBA notified the Parrs, however, that both loans were seriously delinquent. The Parrs still did not tender payment on the second loan, even though the date for the second payment on this loan, February 1, 1981, was approaching. Without ever having received the first payment which was due on August 1, 1980, the SBA deferred the second payment from February to August 1981.

The April 1, 1981 repayment date for the first loan passed without any repayment. On May 13, the SBA de-

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[2] This loan application was subsequently denied.

ferred for the third time the first payment on the first loan to July 1, 1981. When this date passed without payment, the SBA wrote to the Parrs requesting payments on August 12, August 25, September 4, and October 1, 1981. In addition, the August 1, 1981 repayment date for the second note also passed without payment. On October 21, the SBA wrote the Parrs about these overdue payments, and on November 19, notified the Parrs that both debts were being accelerated. Acceleration letters were sent again on April 1, 1982. Except for the repayment of $13,809 to return duplicate benefits, the Parrs failed to tender a single repayment under either loan.

B.

On March 7, 1983, the United States, on behalf of the SBA, brought suit against the Parrs, seeking to recover the amounts due on both loans. The procedural aspects of this action, extending over more than two years, are complex and not relevant to the outcome of this appeal. From the important thrusts and parries, we note that the Parrs admitted executing both promissory notes and receiving demands for payment, but contended that the terms of the contract included representations made to them by SBA officials at the time these loans were negotiated, and that the United States was in default on these additional contract terms which caused the Parrs to sustain monetary damages that more than offset the amount owing to the SBA. Thus, to offset the United States' prima facie case, and as recoupment for the Parrs' loss, the Parrs, in the second amended pretrial order, asserted the following three affirmative defenses:

> 1. Defendant asserts that he suffered crop disasters in 1977, 1978, 1979 and 1980. He obtained loans for the first two disasters and processed application for the third and fourth. The third application was granted and funding was refused by local SBA officials. Defendant contends that

this action caused his default and is an offset in law and equity.

2. Defendants assert that the Plaintiff is estopped from liquidating, accelerating or otherwise attempting to foreclose without first giving defendants notice and opportunity to request deferral in accord with Title 13 C.F.R. and that such action by plaintiff would violate defendants' constitutional right to due process under the Fifth Amendment.

3. Defendants assert that plaintiff is in material breach of the contract between the parties and that the defendants are not obligated to further performances under the contract.[3]

On April 19, 1985, the United States moved to strike these defenses under Federal Rule of Civil Procedure 12(f). On May 7, 1985, the district court partially granted the United States' motion to strike, leaving the Parrs with only their third affirmative defense. The court also granted the United States' motion in limine, preventing the Parrs from introducing evidence or testimony regarding rejected loan applications filed by the Parrs with the SBA after the first and second loans were executed.

A jury trial began on May 7, focusing primarily on the Parrs' assertion that the United States was in material breach on the contract between the parties. The United States established its prima facie case of the Parrs indebtedness on the 1978 and 1979 loans and rested its case. The Parrs then offered testimony by seven witnesses to

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[3] In their brief, the Parrs list the affirmative defenses included in the original pretrial order entered into on March 15, 1985. These defenses were modified in a second pretrial order entered into on May 6, 1985. The order to strike and the trial properly relied on only the defenses contained in the May 6 order. On appeal, we consider only these defenses.

show that additional representations, not apparent on the face of the written agreement, were made to the Parrs and that these representations were material terms of the loan agreement. After the Parrs rested their case, the United States offered no rebuttal evidence. After agruments by the parties, the district court granted the United States' motion for a directed verdict, and ordered that the United States recover from the Parrs $437,478.14, plus interest. The Parrs filed a timely notice of appeal.

II

A.

The Parrs raise two issues on appeal. First, the Parrs contend that the district court erred as a matter of law in striking their first two affirmative defenses. Second, the Parrs argue that the district court erred in granting the United States' motion for a directed verdict.

B.

The Parrs assert two reasons why it was error for the district court to strike two of their affirmative defenses before trial. First, the Parrs contend that the United States' motion to strike was untimely as is was filed more than twenty days after the Parrs' pleading was served on the government. *See* Fed. Rule of Civ. Pro. 12 (f). While the Parrs accurately assess the the time periods involved, we note that they did not raise this issue to the district court when responding to the United States' motion to strike. Since issues not raised below will generally not be considered on appeal, we decline to reverse the motion to strike on this ground.

The Parrs' second contention is that the district court erred in finding the affirmative defenses insufficient as a matter of law. The first defense asserts that the Parrs defaulted on their loans because applications for a third

and fourth loan were denied. Clearly, this defense is legally insufficient because a decision not to extend further credit does not offset an already existing obligation, unless the creditor has an obligation to lend additional funds. The Parrs contention that the United States did have such an obligation is the sole basis of the third affirmative defense. *See infra* p. 9. Since the first and third defenses, when examined, are overlapping, the district court's decision to strike the first defense was not an abuse of discretion.

The second affirmative defense contends that the United States is estopped from accelerating debts on the loans without first giving the Parrs notice and an opportunity to request deferrals. We find this defense difficult to understand. First, the Supreme Court has held that people are charged with knowledge of the contents of federal regulations, just as they are charged with knowledge of statutory law. *See Federal Crop Insurance Co. v. Merrill*, 332 U.S. 380, 384-85, 68 S.Ct. 1, 92 L.Ed. 10 (1947). Thus, officers of the United States were not responsible for informing the Parrs of any right to loan deferrals before acceleration. Second, even if the United States did have and obligation to inform the Parrs of the availability of deferrals, the Parrs were so informed. In fact, the Parrs received three deferrals on the first loan and two deferrals on the second. Since the Parrs had actual notice of their right to receive deferrals, any claim for not being informed of this right is moot. Thus, the district court properly granted the motion to strike the Parrs' second affirmative defense.

C.

The Parrs' second contention on appeal is that the district court erred as a matter of law when it granted the United States' motion for a directed verdict. The Parrs' claim seems to be that the contract between the Parrs and the SBA included assurances that the SBA would not require any payments on the loans during disaster years

and that the SBA breached this agreement. As a result of this alleged breach, the Parrs assert, they have a valid set-off against the SBA's prima facie case. We disagree.

We do not decide what representations, if any, were made to the Parrs because, even if the asserted representations were made, they do not become terms of the loan agreement between the SBA and the Parrs. "Regardless of the strong moral implications, it is well established that the Government is not bound by the unauthorized or incorrect statements of its agents." *Posey v. United States*, 449 F.2d 228, 234 (5th Cir. 1971). *Accord, United States v. R & D One Stop Records, Inc.*, 661 F.2d 433, 434-35 (5th Cir. 1981). Since no terms could have been added to the written promissory notes beyond those authorized by federal regulation, and since the SBA complied with its own regulations, any unauthorized or incorrect representation made to the Parrs did not become terms of the loan agreement.[4] Thus, the district court properly granted the United States' motion for directed verdict because, as a matter of law, the Parrs had no defense to the government's complaint.

III

We find that the district court did not err in striking two of the Parr's affirmative defenses to the United States' prima facie case. Since there was no error in granting the directed verdict in favor of the United States, the judgment of the district court is

AFFIRMED.

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[4] The Parrs vigorously assert that since the United States did not specifically advance this argument when moving for a directed verdict, this court cannot affirm on this ground. We disagree. "The prevailing party may, of course, assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court." *Dandridge v. Williams*, 397 U.S. 471, 475 n.6, 90 S.Ct. 1153, 1156, 25 L.Ed.2d 491 (1970).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

CIVIL ACTION NO. 2-83-38

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BRUCE EDWARD PARR AND GRACE MAE PARR,
Defendants.

J U D G M E N T

On this 9th day of May, 1985, came on to be considered the United States of America's Motion for directed verdict, and the Court, after having heard all the evidence and considered the argument of counsel, is of the opinion that the motion should and the same is hereby granted;

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the United States of America, have and do recover of the defendants, BRUCE EDWARD PARR and GRACE MAE PARR, jointly and severally, the sum of $437,478.14 as of February 28, 1985, plus interest accruing at the daily rate of $30.43 from February 28, 1985 through and including May 9, 1985, plus interest thereafter at the legal rate of 9.15% per annum until judgment is paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that the United States recover its costs of action.

ENTERED this 9th day of May, 1985.

/s/ MARY LOU ROBINSON
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 85-1424

D.C. Docket No. 2-83-38

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

BRUCE EDWARD PARR and Grace M. Parr,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Texas

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Before CLARK, Chief Judge, JOLLY, and HILL, Circuit Judges

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that defendants-appellants pay to plaintiff-appellee the costs on appeal, to be taxed by the Clerk of this Court.

June 24, 1986

ISSUED AS MANDATE: JUL 16 1986

APPENDIX D

15 U.S.C. Section 631. *Declaration of Policy*

(b) It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

15 U.S.C. Section 636. *Additional Powers*

(b) *Disaster loans; term; suspension of principal and interest payments; rate of interest*

The Administration also is empowered -

(1) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate because of floods, riots or civil disorders, or other catastrophes;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster, if the Administration determines that the concern has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes -

> (A) a major disaster, as determined by the President under the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other

purposes", approved September 30, 1950, as amended (42 U.S.C. 1855-1855g); or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1961); or

(C) a disaster, as determined by the Administrator of the Small Business Administration pursuant to the Disaster Relief Act of 1970; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

(E) Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made under this paragraph in connection with a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 percent on the amount of such loan not exceeding $25,000.

. . . .

. . . *Provided*, That the Administration may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years if (A) the borrower under such loan

is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship.